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JUL 25 2008

Docket No.: 041-2057C

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of
Ryota TSUKIDATE :
:Confirmation No. 3199
:
:
Serial No. 10/684,643 :Group Art Unit: 2615
:
Filed: October 15, 2003 :Examiner: ONUAKU, Christopher
For: MULTIMEDIA RECORDER WITH ENHANCED EPG-RELATED FUNCTIONS

Honorable Commissioner of Patents
PO BOX 1450
Alexandria, VA 22313-1450

PETITION TO REVIVE

FILED BY FACSIMILE 1 571 273 8300

Sir,

During a recent telephone conversation with the above referenced examiner, it was called to my attention that an office action had been issued in the referenced application more than six (6) months ago and that, because that action had not been responded to, the instant application was considered to be abandoned. The examiner advised the undersigned attorney that the referenced office action had been mailed to the address of record in this application and that the above referenced examiner had unsuccessfully tried on several occasions to get into telephone contact with the undersigned attorney. This is inconsistent with the facts as set forth below.

This application was filed on October 15, 2003.

The Power of attorney filed with the instant application indicated that correspondence should be sent to Low Hauptman Gilman & Berner at 1700 Diagonal Road, Alexandria, VA 22314. On January 26, 2005 this first correspondence address was changed by, informing the Patent and Trademark Office in writing that the undersigned attorney's new address was 5522

Riva Ridge Drive, Wesley Chapel, FL 33544. Receipt of this document is acknowledged in the listing of documents in PAIR.

On November 13, 2005 a second correspondence address change was filed, informing the Office that the undersigned attorney's new address was 424 Lantana Park, Lexington, KY 40515. Receipt of this document is acknowledged in the listing of documents in PAIR.

The Office Action in issue here was issued by the examiner on November 1, 2007 well after the second address change had been received and made of record in the Patent Office. It addressed the correspondence (the office action) to 5522 Riva Ridge Drive, Wesley Chapel, FL 33544. Of course, this attempted correspondence was never received by the undersigned attorney at any address. The correct address of the undersigned attorney, at the time that the Office Action of November 1 was mailed, was 424 Lantana Park, Lexington, KY 40515 as set forth in the Change of Address form filed November 13, 2005. Applicant's failure to receive this action was not the fault of the undersigned attorney or the applicant but was clearly the fault of the Patent Office as it had been sent to the wrong address despite the fact that the official Patent Office file clearly indicated what the attorney's correct address should have been.

Under the circumstances, the abandonment of the above identified patent application was unavoidable because, through the exclusive fault of the Patent Office and not through any fault of applicant, applicant never received the office action of November 1, 2007. One cannot timely or otherwise reply to an office action that has never been received. It is believed that the above discussion and a review of the official Patent Office file in this matter should satisfy the requirements of 37 CFR 1.137(a)(3) and result in a finding that the abandonment was unavoidable.

On July 24, 2008 during a telephone conference with the examiner, the undersigned attorney specifically requested that the examiner immediately send a copy of this office action to him by FAX. That has not been done. A copy of this office action has been made from the file in PAIR. It has been sent to the inventor by FAX on July 25 for commentary sufficient to enable the preparation and filing of a response to the action. A response, as required under 37 CFR 1.137(a)(1), will be drafted and filed as soon as possible.

It is recognized that 37 CFR 1.137(a)(2) requires the filing of a Petition fee in matters of this nature. It is believed, however, that since the abandonment was wholly the fault of the Patent Office, a petition fee should be waived. If this contention is in error, kindly debit the petition fee of \$500 set forth by 37 CFR 1.17(l) to the undersigned attorney's deposit account 503406 and advise the undersigned attorney of this action. Should it be decided that the instant abandonment was not unavoidable but rather was unintentional, it is requested that the fee of \$1,500 provided for in 37 CFR 1.17(l) be debited from the above identified deposit account.

It is recognized that 37 CFR 1.137(a)(4) speaks to the filing of a Terminal Disclaimer. It is believed that such a terminal disclaimer would be inappropriate in the instant application as the delay in issuance of the instant patent caused by the failure to timely respond to the outstanding office action was due wholly to the actions of the Patent Office. In fact, any such delay should be favorably considered when determining whether the term of such a patent should be extended. However, should it be decided that a Terminal Disclaimer is appropriate in this matter, the undersigned attorney should be so advised and a Terminal Disclaimer will be provided.

In determining this matter, consideration should be given to the following listed documents submitted herewith:

Correspondence address change filed January 26, 2005; and

Correspondence address change filed November 13, 2005

Respectfully submitted,

INTELLECTUAL PROPERTY LAW OFFICE of

MICHAEL G. GILMAN


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July 25, 2008

Attachments